UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/092,498
Filing Date: March 08, 2002
Appellant(s): KRAUSE ET AL.

Philip R. Krause
Appellant Pro Se

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 29, 2009 appealing from the Office

action mailed September 26, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct. Note that claim 4 indicated by the appellant as "Currently amended", and it should be removed.

(8) Evidence Relied Upon

"Bounrty Server, The Proposal:",

http://web.archive.org/web/20001017123028/www.bounty.org/proposals/proposal1.html,

Archived copies from October 17, 2000 of the website

www.bounty.org/proposals/proposal1.html.

(9) Grounds of Rejection

The following ground(s) of rejection are copied from the Final office action mailed

on September 26, 2008 and applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed
> publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-2, 6, 8-14, and 17-20 are rejected under 35 U.S.C. 102(a) as being

anticipated by www.Bounty.org (hereinafter "Bounty").

Examiner notes the use of the "The WayBack Machine" at www. archive.org for

this Office Action. The Internet Archive is a comprehensive library of Internet sites and

other cultural artifacts in digital form. The Wayback Machine is a free service allowing

people to access and use archived versions of past web pages within the Internet

Archive. Visitors to the Wayback Machine can type in a URL, select a date range, and

then will be able to search and view the Internet Archive's enormous collection of web

sites, dating back to 1996 and comprising over 10 billion web pages. In this case the

Examiner found an archived version of www.bounty.org/proposals/proposal1.html from

October 17, 2000 with a description of a proposed system for awarding cash payments

for the creation of new technologies, such as "copylefted" software.

Regarding claims 1, 17 and 18, Bounty discloses a method and computer

system for awarding cash payments for the creation of new technologies in sequence

(see Abstract and Background), including:

a) Identifying a cause (the first paragraph under the heading "The proposal:"; the

first two paragraphs under the heading "To get more specific:"; and the section

"Writing the bounty:");

b) Identifying an entity capable of performing an action related to the cause (the

second paragraph under the heading "The proposal:", and the fourth paragraph

under the heading "To get more specific:"; *The Examiner notes that "entity"*

corresponds to the people who can add to the bounty);

c) Setting parameters for the cooperative auction, said parameters comprising:

- identifying a price for the action (the fourth paragraph under the

heading "To get more specific:", and the content under the heading

"Fees");

- specifying, via a computer system, a deadline for receiving pledges

earmarked for the action (the second paragraph under the heading

"The proposal:" and the third and fourth paragraphs under the heading

"To get more specific:"; *The Examiner notes that in this instance the*

deadline for receiving bids would be when a developer uploads the

developed software and the bounty is awarded. The Examiner further

notes that Bounty discloses contingency plans for unclaimed, unmet,

or expired bounties – see item 6 under "Writing the bounty:" and the

second paragraph under "Adding to the bounty:");

d) Receiving, via a computer system, before the deadline, a plurality of pledges

of value units earmarked for the action (the second paragraph under the heading

"The proposal:" and the third and fourth paragraphs under the heading "To get

more specific:");

e) Providing consideration to the entity in exchange for performance of the

action, where the consideration comprises value units pledged in step d (the

second paragraph under the heading "The proposal:" and the third and fourth

paragraphs under the heading "To get more specific :").

Regarding claims 2 and 19, Bounty further discloses entering an agreement

with the entity, the agreement containing a condition such that, if the condition is met,

the entity agrees to take the action (see "Writing the bounty:"; *The Examiner notes that*

the bounty specification include several conditions laid out by the initiator of the bounty,

to which the developer inherently agrees by developing and submitting software in

response to the posted bounty to collect the money).

Regarding claim 6, Bounty further discloses that the total amount of

contributions from the contributors equals the amount of the bounty (the second

paragraph under the heading "The proposal:", and the third and fourth paragraphs

under the heading "To get more specific :").

    Regarding claims 8-14 and 20, Bounty further discloses that the entity is the holder of an intellectual property right, the cause is the extinguishment or renunciation of the intellectual property right, and that the intellectual property right may be a copyright right, including the right of electronic distribution of a copyrighted work, the right to reproduce a copyrighted work, and the right to make a derivative work of a copyrighted work, as well as that the extinguishment of the intellectual property right may be effectuated by transferring the intellectual property right to a second entity, which has represented that it will not enforce the intellectual property right (see Abstract; Background; the third paragraph under "The proposal:"; the fourth paragraph under "To get more specific:"; and item 5 of "Writing the bounty:").

    The Examiner notes that the developer accrues certain intellectual property rights by developing new software, such as copyrights, to which the developer extinguishes or renounces at least a portion of those rights by agreeing to let the developed software be "copylefted". The Examiner further notes that "copyleft" is a well-known form of licensing that may be used to modify copyrights for a variety of works, including computer software, documents, music, and art. Under current law, rights under copyright law permit the author of a work to prohibit others from reproducing, adapting, or distributing copies of the author's work. However, copyleft allows the copyright holder to give those who receive a copy of the protected work permission to reproduce, adapt or distribute the work as long as any resulting copies or adaptations are also bound by the same copyleft agreement. The GNU General Public License is a commonly used copyleft license that generally covers rights under copyright including

the distribution and reproduction of copyrighted works, as well as the creation of

derivative works.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 3-5, 7 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Bounty.org (hereinafter "Bounty") view of Official Notice.

Regarding claims 3 and 4, as noted above, Bounty discloses that the posted

bounties may expire. However, Bounty does not explicitly disclose that the agreement

is entered prior to receipt of pledges, and that the agreement specifies a time limitation,

such as a deadline, related to payment of the price. The Examiner takes Official Notice

that is was old and well-known in the art at the time the invention was made to include a

time limitation, such as a deadline, within an agreement for the purposes of ensuring

that performance under the agreement is accomplished in timely manner consistent with

the goals of the parties to the agreement. Therefore, it would have been obvious to one

of ordinary skill in the art at the time the invention was made to modify the bounty

specifications of Bounty to include a specific time limitation for providing the requested

software, in order to ensure the initiator of the bounty received the desired software in a

timely manner, as was old and well-known.

Regarding claim 5, Bounty further discloses that a plurality of pledges are made by at least one bidder (the second paragraph under "The proposal:", and the third paragraph under "To get more specific :"). However, Bounty does not explicitly disclose that the bidder may set an expiration time for his pledge. The Examiner takes Official Notice that it was old and well-known in the art at the time the invention was made for a bidder to include an expiration time on a bid, for the purpose of providing predictability for the bidder regarding outstanding potential financial obligations. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to permit the contributors to the bounty in Bounty to set times for their pledges to expire, in order to permit the contributors of predictably forecast their financial obligations, as was old and well-known.

Regarding claim 7, Bounty does not explicitly disclose that a bidder's pledge results in a transfer of value units from the bidder if the condition is met prior to expiration of the pledge. The Examiner takes Official Notice that it was old and well-known in the art at the time the invention was made to utilize only valid bids in an auction or similar system, for the purpose of ensuring the integrity of the auction. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bounty to ensure that only valid pledges from contributors were included in the bounty, in order to ensure the integrity of the bounty system by providing the developer with the posted bounty, as was old and well-known.

Regarding claims 15 and 16, as noted above, Bounty discloses a method and computer system for awarding cash payments for the creation of new technologies (see Abstract and Background). However, while Bounty explicitly discloses the creation of software and addresses the copyright issues, Bounty does not explicitly disclose that the intellectual property right may be a patent right, such the right to manufacture a product. The Examiner takes Official notice that it was old and well-known in the art at the time the invention was made that new technologies, in particular software, may be covered by a wide-range of intellectual properties, including copyrights and patents, for the purpose of promoting the useful arts and sciences by providing specified rights and protections to the innovator. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bounty to include or address the disposition of the patent rights related to any software developed and submitted, in order to further promote subsequent distribution free from lingering intellectual property claims.

(10) Response to Argument

The appellant states the examiner interpreted "entity" as people who can add to the bounty while the "entity" in the appellant's application is ultimate recipient of the bids who will then for example donate intellectual property to the public (see arguments on pages 12-13 of the appeal brief). First, such distinction is not presented in the claim language. Secondly, the appellant claims "identifying an entity capable of...", that the limitation "capable of" is intended uses or capabilities and not positive limitations. See *In re Schreiber*, 44 USPQ 2d 1429, and *In re Collier*, 158 USPQ 266. Thirdly, the entity

in Bounty is "capable of" perform an action related to the cause, and specifically for the

people who add to bounty that are capable of perform an action <u>related</u> developing the

bounty (see the second paragraph under the heading "The proposal:", and the fourth

paragraph under the heading "To get more specific:"). Note that the word "related" is

emphasized because people who add information to the bounty may not be rewarded

for developing the bounty, but they are capable of doing the action <u>related</u> to the cause

by adding the information to the bounty which is related to the cause.

In response to the appellant's arguments that Bounty fails to teach identifying a

price for the action (see arguments on page 13 of the appeal brief), the examiner

respectfully disagrees. The limitation "action" corresponds to the developing a bounty,

and where in the Bounty reference under heading "Fees", it shows the price for

developing a bounty such as "The Organization will get 2% of any bounty". Thus,

Bounty discloses "identifying a price for the action" as claimed by the appellant.

In response to the appellant's arguments that Bounty fails to teach specifying a

"deadline" for receiving pledges earmark for the action and receiving before the

deadline a plurality of pledges of value unit earmarked for the action (see arguments on

pages 14-15 of the appeal brief), Bounty teaches this limitation by having the

user/initiator to specify the outcome if the bounty is unclaimed, such as the money will

go to specified charities (see item 6 under heading "Writing the bounty"), or otherwise

the bounty is successfully claimed/awarded upon a developer uploads the developed

software (see the fourth paragraph under heading "To get more specific"). There is a

clearly indication that a deadline is set for receiving the uploaded developed software

because if the software is uploaded too late, the bounty will be considered as unclaimed and the money will go to specified charities. Furthermore, as discussed in the last paragraph, the word "action" corresponds to the developing a bounty; thus Bounty teaches specifying a deadline for receiving pledges earmark for the action and receiving before the deadline a plurality of pledges of value unit earmarked for the action by allowing the initiator setup a deadline for receiving a uploaded developed software from a developer.

In response the appellant's arguments that Bounty fails to teach "providing consideration to the entity in exchange for performance of the action, where the consideration comprises value units pledged in step d", Bounty teaches this limitation by allowing plurality of people to add information to the bounty, and the bounty is awarded upon a developer adds/uploads the information with a working package/developed software (see the second paragraph under the heading "The proposal:", and the third and fourth paragraphs under the heading "To get more specific:").

All other arguments are based on the discussions above; thus rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Mary Cheung/

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Supervisory Patent Examiner, Art Unit 3694